

copy of the service list and all pleadings, notices, orders, briefs and opinions filed in such proceedings. Failure by the Postal Service to display prominently any such document shall be deemed sufficient reason to suspend the effectiveness of the Postal Service determination under review until final disposition of the appeal.

[42 FR 10993, Feb. 25, 1977. Redesignated at 48 FR 33708, July 25, 1983]

Subpart I—Rules for Expedited Review To Allow Market Tests of Proposed Mail Classification Changes

SOURCE: 66 FR 54441, Oct. 29, 2001, unless otherwise noted.

§ 3001.161 Applicability.

This section and §§ 3001.162 through 3001.166 apply in cases in which the Postal Service requests a recommended decision pursuant to section 3623 preceded by testing in the market in order to develop information necessary to support a permanent change. The requirements and procedures specified in these sections apply exclusively to the Commission's determination to recommend in favor of or against a market test proposed by the Postal Service, and do not supersede any other rules applicable to the Postal Service's request for recommendation of a permanent change in mail classification. In administering this subpart, it shall be the policy of the Commission to recommend market tests that are reasonably calculated to produce information needed to support a permanent change in mail classification, and that are reasonably limited in scope, scale, duration, and potential adverse impact. Except in extraordinary circumstances and for good cause shown, the Commission shall not recommend market tests of more than one year in duration; however, this limitation is not intended to bar the Postal Service from conducting more than one market test in support of a potential permanent change in mail classification in appropriate circumstances.

[66 FR 54441, Oct. 29, 2001, as amended at 71 FR 66678, Nov. 16, 2006]

§ 3001.162 Filing of market test proposal and supporting direct evidence.

Whenever the Postal Service determines to request that the Commission submit a recommended decision on a change in mail classification preceded by testing in the market, the Postal Service shall file with the Commission, in addition to its request for a permanent change in mail classification pursuant to section 3623, a request for a recommended decision in favor of its proposed market test of the requested change in mail classification. Each formal request filed under this subpart shall include such information and data and such statements of reasons and bases as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance and impact of the proposed market test, and to show that it is in the public interest and in accordance with the policies of the Act and the applicable criteria of the Act. Each formal request shall also include the following particular information:

(a) A description of the services to be provided in the market test, and the relationship between the services to be provided and the permanent change or changes in the mail classification schedule requested by the Postal Service;

(b) A statement of each rate or fee to be charged for each service to be provided during the market test, together with all information relied upon to establish consistency of those rates and fees with the factors specified in section 3622(b);

(c) A description of the number and extent of the service areas in which the market test will be conducted, including the number and type of postal facilities which will be used;

(d) A statement of the planned duration of the market test;

(e) Proposed Domestic Mail Classification Schedule provisions which incorporate the information required in paragraphs (a) through (d) of this section;

(f) A statement of the goals and objectives of the proposed market test, supported by quantitative projections of anticipated results to the extent practicable.

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(g) A statement of those features of the proposed market test that, in the opinion of the Postal Service, cannot be modified without significantly impairing the value of the test;

(h) An estimate of the number of customers who will participate in the market test to the extent that such an estimate is practicable, together with a description of the means by which the Postal Service plans to provide equal access to all potential users in the test market service areas; and

(i) A plan for testing the proposed change or changes in the market, including a plan for gathering the data needed to support a permanent change in mail classification and for reporting the test data to the Commission. If periodic reporting of the test data would be harmful to the purposes of the test, such as by revealing information that might encourage competitors or mailers to take actions that would affect the test results, the plan may provide for presentation of the test data as part of the subsequent filing of data supporting a permanent mail classification change.

§ 3001.163 Procedures—expedition of public notice and procedural schedule.

(a) The purpose of this section is to provide a schedule for expediting proceedings in which the Postal Service proposes to conduct a market test of a requested change in mail classification it has submitted to the Commission pursuant to section 3623.

(b) Persons who are interested in participating in proceedings to consider Postal Service requests to conduct a market test may intervene pursuant to Subpart A of the rules of practice. Parties may withdraw from a particular case by filing a notice with the Secretary of the Commission.

(c) When the Postal Service files a request under the provisions of this subpart, it shall comply with the standard Filing Online procedures of §§ 3001.9 through 3001.12.

(d) When the Postal Service files a request under the provisions of this subpart, it shall on that same day file a notice that briefly describes its proposal. This notice shall indicate on its first page that it is a notice of a Mar-

ket Test Request to be considered under §§ 3001.161 through 3001.166.

(e) Within 5 days after receipt of a Postal Service request under the provisions of this subpart, the Commission shall issue a notice of proceeding and provide interested persons a minimum of 15 days after filing of the Postal Service request within which to intervene. In the event that a party wishes to dispute a genuine issue of material fact to be resolved in the consideration of the Postal Service's request, that party shall file with the Commission a request for a hearing within the time allowed in the notice of proceeding. The request for a hearing shall state with specificity the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the fact or facts and the evidence it intends to provide in support of its position. The Commission will hold hearings on a Postal Service request made pursuant to this subpart when it determines that there is a genuine issue of material fact to be resolved, and that a hearing is needed to resolve that issue.

[66 FR 54441, Oct. 29, 2001, as amended at 68 FR 12590, Mar. 17, 2003; 71 FR 66678, Nov. 16, 2006]

§ 3001.164 Rule for decision.

The Commission will issue a decision on the Postal Service's proposed market test in accordance with the policies of the Postal Reorganization Act, but will not recommend modification of any feature of the proposed market test which the Postal Service has identified in accordance with § 3001.162(g). The purpose of this subpart is to allow for consideration of proposed market tests within 90 days, consistent with the procedural due process rights of interested persons.

§ 3001.165 Data collection and reporting requirements.

In any case in which the Commission has issued a recommended decision in favor of a market test requested by the Postal Service, and the Board of Governors has put the market test recommended by the Commission into effect, the Postal Service shall gather test data and report them to the Commission in accordance with the plan